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LEGAL UPDATE

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Michigan adopts the good faith exception.

On September 23, 2001, twelve days after the terrorist attacks of September 11, 2001, police officers observed defendant collecting money on a street corner. He was wearing a shirt with the word "Fireman" written on it and holding a fireman's boot. He also carried a firefighter's helmet and jacket. Defendant told a police officer that he was collecting money for the firefighters in New York, but denied being a firefighter himself. The officers confiscated $238 from defendant along with the firefighter paraphernalia, but did not immediately arrest him. Later, the officers successfully sought a search warrant for defendant's home. The warrant listed the address as "29440 Hazelwood, Inkster" and authorized the police to seize the following items: Police/Fire scanner(s) or radios, fire, EMS, Police equipment. Any and all emergency equipment, bank accounts, currency, donation type cans or containers, any and all other illegal contraband.

The search uncovered more firefighter paraphernalia, a firearm, and marijuana. The prosecutor charged defendant with being a felon in possession of a firearm, MCL 750.224f; possession of a firearm during the attempt or commission of a felony, MCL 750.227b; two counts of possession of marijuana, MCL 333.7403(2)(d); and larceny by false pretenses, MCL 750.218.

Defendant filed a motion to suppress evidence, which the court granted. The court ruled that the search warrant affidavit did not connect the place to be searched with defendant and did not state the date that the police observed defendant soliciting money. The court thus concluded that the affidavit did not establish probable cause for the issuance of a warrant and dismissed the felon in possession, felony-firearm, and marijuana possession charges. The prosecutor appealed arguing that the police were acting in good faith when the items were seized.

HELD - We adopt the good-faith exception to the exclusionary rule in Michigan. The purpose of the rule, i.e., deterring police misconduct, would not be served by applying the exclusionary rule in this case because the police officers' good-faith reliance on the search warrant was objectively reasonable. Thus, the officers committed no wrong that exclusion of the evidence would deter...The police officers' reliance on the district judge's determination of probable cause and on the technical sufficiency of the search warrant was objectively reasonable. The information in the affidavit was not false or misleading, and the issuing judge did not "wholly abandon" her judicial role. A review of the affidavit and search warrant can lead to no other logical conclusion than that the address listed was that of defendant. Indeed, it probably did not even occur to the magistrate or executing officers that the address was not defendant's address. Further, the affidavit was not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." People v Goldston, MSC No. 122364 (July 15, 2004)

Counsel is not required for identification proceedings that occur before the initiation of any adversarial judicial criminal proceeding.

Officers responded to an armed robbery complaint and met with complainant who advised them that two men had robbed him. Complainant stated that one of the men, later identified as defendant, pointed the gun at his face while the other person took two radios and money from him. Complainant provided a description of the two men and the gun that had been used. An officer saw a subject fitting the description of the man with the gun. The subject, arrested after a short foot chase, was found to be in possession of one the radios. Police also

recovered a gun, matching the description of the weapon that had been pointed at complainant, that the subject had thrown away during the foot chase. Approximately ten minutes later, an officer took complainant to a police car in which defendant was being held. Complainant immediately identified defendant as the man with the gun. Defendant made a motion to suppress the on-the–scene identification by the victim on the grounds that he was not represented by counsel at the time of the identification.

HELD: The Michigan Supreme Court overturned the "very strong evidence" rule established in *People v Turner* and held that the right to counsel attaches only to corporeal identifications conducted at or after the initiation of adversarial judicial proceedings. The Court stated that the on-the-scene identification in this case was made before the initiation of any adversarial judicial criminal proceeding; thus, counsel was not required. People v Hickman C/A No. 122548 (July 20, 2004).

While police are free to employ the knock and talk procedure, they have no right to remain in a home without consent, absent some other particularized legal justification.

After receiving a tip that defendant was storing marijuana at his residence, officers conducted surveillance on defendant's residence for approximately two weeks. However, officers were unable to observe any activity that supported the tip. After the two weeks of surveillance, officers went to defendant's residence to conduct a "knock and talk." Officers informed defendant that they were police and that they had received a tip that marijuana was stored at the residence. Although defendant did not deny that there was any marijuana at the residence he denied a request to search the residence. Further, defendant asked the officers to leave the residence. However, officers did not leave and began to question defendant about a large amount of money they had discovered in defendant's rear pocket when conducting a pat-down search of defendant's person around the waist area for weapons "to protect myself" and because "it's good police procedure and safety."

Eventually, defendant admitted to having marijuana at his residence and produced 3.7 pounds of marijuana from his freezer. Defendant then voluntarily went to the police station and, without being advised of his Miranda rights, defendant gave a tape-recorded statement and later signed a consent search form.

HELD: A "seizure" occurs when a police officer "by means of physical force or show of authority, has in some way restrained the liberty of a citizen." While police are free to employ the knock and talk procedure, they have no right to remain in a home without consent, absent some other particularized legal justification. A person is seized for purposes of the Fourth Amendment when the police fail to promptly leave the person's house following the person's request that they do so, absent a legal basis for the police to remain independent of the person's consent. The remaining question is whether the inherently coercive context in which defendant was seized entitles him to have his incriminating statements and the marijuana suppressed. Because this evidence resulted from the police officer's improper conduct in failing to leave when requested, they were properly suppressed as the fruit of the illegal seizure when the police officers failed to leave the house when defendant asked them to do so. People v Bolduc C/A No. 244970 (Aug. 24, 2004).

Mandated reporters are only required to report suspected child abuse.

School administrators learned that a twelve-year-old and thirteen-year-old had been sexually active at the school. The parents were notified but not FIA under the child protection law. The administrators were charged for failing to report but the charges were dismissed.

HELD - Under the Failure to Report Child Abuse statute (MCL 722.622(e), the definition of "child abuse" means that mandated reporters are only required to report child abuse – which includes nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment- when the suspected perpetrator is a parent, legal guardian, teacher, teacher's aide, or other person responsible for the child's health and welfare. People v Beardsley and Wojcik C/A No. 246202 Aug. 24, 2004.